

Remarks

In response to the Final Office Action mailed on October 7, 2005, Applicants respectfully request reconsideration. Claims 1, 5, 6, 8, 10-11, 15-16, 18, 20-22, 25-27, 30-31, 34-37 and 40-42 are now pending in this Application. Claims 1, 11, 21, 31 are independent claims and the remaining claims are dependent claims. In this Amendment, claims 1, 11, 21 and 31 have been amended and claims 24 and 34 have been cancelled. Claims 41 and 42 have been added. A version of the claims containing markings to show the changes made is included herein above. Applicants believe that the claims as presented are in condition for allowance. A notice to this affect is respectfully requested.

Preliminary Matters

The Examiner issued a Final Rejection, which Applicants respectfully suggest is inappropriate at this time. MPEP §706.07(a) states " .. second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement ...". Applicants respectfully submit that, with respect to the pending claims at the time, the amendment submitted on July 12, 2005 moved a limitation from pending dependent claims (e.g., claims 4 and 6) into a dependent claim (e.g., claim 1). Accordingly, the Examiner's new grounds of rejection submitted in the final rejection was not necessitated by Applicants amendment, nor by the submittal of an IDS, and therefore the present rejection should not have been a final rejection. Applicants request that the finality of the present rejection be withdrawn.

Rejections under §102

Claims 1, 5-6, 8, 10-11, 15-16, 18, 20-22, 24-27, 30-32, 34-37 and 40 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2002/0067730 A1 to Hinderks et al. (hereinafter Hinderks).

Hinderks discloses a method and apparatus for IP multicast content wherein the insertion of demographically targeted advertisements are inserted in to the content and distributed over national and regional networks.

Claim 1 has been amended to further include the limitations of claim 24, namely that the buffer status sensor includes an audio sampler sampling portions of the audio stream and wherein the audio sampler is voice responsive. Hinderks fails to disclose or suggest wherein an audio sampler is voice responsive.

In the rejection of claim 24, the Examiner sated that Hinderks discloses wherein an audio sampler is voice command responsive. Applicant scan find no mention of a voice command responsive audio sampler. If the Examiner is to maintain this rejection, the Examiner is asked to specifically point out where in Hinderks the mention of a voice responsive audio sampler is disclosed.

Therefore, since amended claim 1 discloses an audio sampler which is voice command responsive, while Hinderks fails to disclose or suggest a voice responsive audio sampler, claim 1 is believed allowable over Hinderks. Claims 11m 21 and 31 have been amended in a similar manner and are believed allowable for the same reasons as claim 1. Claims 5, 6, 8, 10, 15, 16, 18, 20, 22, 25-27, 30, 32, 35-37 and 40 depend from claims 1, 11, 21 or 31 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 1, 5-6, 8, 10-11, 15-16, 18, 20-22, 24-27, 30-32, 34-37 and 40 under 35 U.S.C. §102(e) as being anticipated by Hinderks is believed to have been overcome.

Claims 41 and 42 have been added. Support for these claims can be found in the specification at page 8, lines 16-23. Applicants submit that no new matter has been added by the addition of claims 41 and 42.

In view of the above, the Examiner's rejections are believed to have been overcome, placing claims 1, 5-6, 8, 10-11, 15-16, 18, 20-22, 24-27, 30-32, 34-37 and 40-42 in condition for allowance, and reconsideration and allowance thereof is respectfully requested.

There is no fee required. If the U.S. Patent and Trademark Office deems a fee necessary, this fee may be charged to the account of the undersigned, Deposit Account No. 50-3735.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-9660, in Westborough, Massachusetts.

Respectfully submitted,



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Attorney Docket No.: NMS03-14

Dated: January 9, 2006